

agency under Public Law 103-354 regulations.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 38908, Oct. 20, 1987; 52 FR 43725, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987; 57 FR 21193, May 19, 1992; 58 FR 226, Jan. 5, 1993; 62 FR 33510, June 19, 1997]

EFFECTIVE DATE NOTE: At 68 FR 65830, Nov. 24, 2003, §1942.1 was amended by revising the first two sentences of paragraph (a), effective Feb. 9, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for Community Facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. * * *

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§ 1942.2 Processing applications.

(a) *Preapplications.* (1) The District Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, SF 424.2, "Application for Federal Assistance (For Construction)." The District Director will assist applicants as needed in completing SF 424.2, and in filing written notice of intent and priority recommendation with the appropriate clearinghouse. The District Director will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for FmHA or its successor agency under Public Law 103-354 financing. The District Director will meet with the applicant, whenever appropriate to discuss FmHA or its successor agency under Public Law 103-354 preapplication processing. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of SF 424.2.

(iii) State intergovernmental review comments and recommendations (clearinghouse comments).

(iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(2) The State Director will review each SF 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of §1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors with their assistance, should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lender representatives interested in receiving such referrals should be maintained.

(ii) The State Director shall maintain a working relationship with the State Office or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed.

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD-622.

(iv) Form AD-622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by FmHA or its successor agency under Public Law 103-354, stating the results of the review action. The original will be signed and delivered to the applicant with a copy to the State Director.

(3) For preapplications eligible for FmHA or its successor agency under Public Law 103-354 funding which have the necessary priority to compete with similar preapplications, FmHA or its successor agency under Public Law 103-354 will issue Form AD-622 inviting an application containing the following statement:

You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions.

(4) The following statement must be added to Form AD-622 when notifying preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA or its successor agency under Public Law 103-354 funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 to proceed.

(b) *Environmental review.* Environmental requirements will be documented in accordance with subpart G of part 1940 of this chapter and submitted to the State Director. Starting with the earliest discussions with prospective applicants or review of

preapplications and continuing throughout application processing, environmental issues must be considered. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. Documentation of the appropriate environmental review should be completed as soon as possible; however, the State Director will ensure that the appropriate environmental review is completed prior to issuing the letter of conditions.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include SF 424.2, and related forms, materials, and information. The application will be assembled in accordance with guide 15 of this subpart or State guides developed under §1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form FmHA or its successor agency under Public Law 103-354 1942-39, "Processing Check List (Other Than Public Bodies)," or Form FmHA or its successor agency under Public Law 103-354 1942-40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the

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District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conference to extend and update the processing checklist.

(d) *Review of decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103-354 may be requested by the applicant under subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(e) *Joint funding.* FmHA or its successor agency under Public Law 103-354 may finance projects jointly with funds from other sources, such as, commercial/private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA or its successor agency under Public Law 103-354 to any applicant to whom FmHA or its successor agency under Public Law 103-354 is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by section 125 of Pub. L. 95-334 (Section

347, Consolidated Farm and Rural Development Act, as amended).

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988; 54 FR 47197, Nov. 13, 1989; 55 FR 13503 and 15304, Apr. 11, 1990; 57 FR 21194, May 19, 1992; 61 FR 6309, Feb. 20, 1996]

§ 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form FmHA or its successor agency under Public Law 103-354 422-10, "Appraisal Report—Water and Waste Disposal Systems," may be used with appropriate supplements. Form FmHA or its successor agency under Public Law 103-354 442-10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by § 1942.17 (g)(2)(iii)(B)(2), (g)(3)(iii)(B)(2), and (j)(4) of this subpart, may be prepared by the FmHA or its successor agency under Public Law 103-354 engineer/architect or, if desired by the State Director, some other qualified appraiser. The loan approval official may require an applicant to provide an appraisal prepared by an independent qualified appraiser; however, the loan approval official must determine that the appraised value shown in such reports reflects the present market value.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988]

§ 1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in